



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2018-0084]**

**RIN 1625-AA08**

### **Special Local Regulation; Low Country Splash, Wando River, Cooper River, and Charleston Harbor; Charleston, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of the Wando River, Cooper River, and Charleston Harbor during the Low Country Splash Open Water Swim event. This action is necessary to ensure the safety of event participants and the general public on navigable waters of the United States during the event. This special local regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within a moving regulated area unless authorized by the Captain of the Port (COTP) Charleston or a designated representative.

**DATES:** This rule is effective from 7 a.m. until 11 a.m. on May 26, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0084 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail Justin.C.Heck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this special local regulation on May 26, 2018 and lack sufficient time to publish an NPRM, provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the regulated area until after the date of the swim event and compromise public safety.

For the reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

## **Register.**

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority to establish special local regulations in 33 U.S.C. 1231. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Low Country Splash Open Swim event presents a safety concern for anyone in the vicinity of the regulated area during the event. This rule is needed to protect participants, spectators, and the general public in the navigable waters within the regulated area during the Low Country Splash Open Swim event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation that will encompass certain waters of the Wando River, Cooper River, and Charleston Harbor during the Low Country Splash Open Swim event. The special local regulation will be enforced from 7 a.m. until 11 a.m. on May 26, 2018. This special local regulation will establish a moving regulated area beginning at Daniel Island Pier, south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, south along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina. Within the regulated area, non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the COTP Charleston or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP Charleston by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP

Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time-of-day of the event. Vessel traffic will be able to safely transit around the regulated area during the event, which will impact a small, moving area of the waters of the Wando River, Cooper River, and Charleston Harbor for a period of only four hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission from the COTP or a designated representative to enter, transit through, anchor in, or remain within the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on “small entities” comprised of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation area may be small entities, for the reasons stated in V.A. above, this rule would not have a significant impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this

rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a moving regulated area on the waters of the Wando River, Cooper River, and Charleston Harbor. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine Safety, Navigation (water), Reporting and recordkeeping requirements,  
Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05-1.

2. Add § 100.T07-0084 to read as follows:

§ 100.T07-0084 Special Local Regulation; Low Country Splash, Wando River, Cooper River, and Charleston Harbor; Charleston, SC.

- (a) Location. The following regulated area is established as a special local regulation:

All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51'20" N, 079°54'06" W, south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49'20" N, 079°53'49" W, south along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina, in approximate position 32°47'20" N, 079°54'39" W. All coordinates are North American Datum 1983.

- (b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated areas.

- (c) Regulations. (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Charleston or a designated representative.

- (2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to request authorization.

- (3) If authorization to enter, transit through, anchor in, or remain within the regulated



area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Charleston or a designated representative.

(4) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This rule will be enforced from 7 a.m. until 11 a.m. on May 26, 2018.

Dated: May 18, 2018

J. W. Reed,  
Captain, U.S. Coast Guard,  
Captain of the Port, Charleston.

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